

Exhibit 32

Control No. 19110518
Control No. 19110521
Control No. 19110522
Control No. 19110523
Control No. 19110526
Control No. 19110527

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ELLEN KLEINER and	:	
YURY KLEINER w/h	:	DOCKETED
Plaintiffs	:	MAY 22 2020
v.	:	
RITE AID CORPORATION,	:	
RITE AID OF PENNSYLVANIA, INC.,	:	JANUARY TERM, 2017
JOHNSON & JOHNSON,	:	N. ERICKSON DAY FORWARD
JOHNSON & JOHNSON CONSUMER	:	
COMPANIES, INC.,	:	NO. 2505
IMERYS TALC AMERICA, INC. f/k/a	:	RECEIVED
LUZENAC AMERICA, INC., and	:	
PERSONAL CARE PRODUCTS COUNCIL	:	MAY 22 2020
f/k/a COSMETIC, TOILETRY, AND	:	
FRAGRANCE ASSOCIATION	:	N. ERICKSON DAY FORWARD
Defendants	:	

MEMORANDUM in SUPPORT OF ORDERS DENYING
MOTIONS TO EXCLUDE OPINIONS PURSUANT TO FRYE

MASSIAH-JACKSON, J.

Kleiner Etal Vs Rite Aid Corporation Etal-MEMOR



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May 22nd, 2020

A. FACTUAL BACKGROUND and PROCEDURAL HISTORY

In 2011, Mrs. Ellen Kleiner, age 44, was diagnosed with Stage IIIB ovarian cancer. After surgery and chemotherapy treatments, she has been in remission. Mrs. Kleiner started using Johnson & Johnson Baby Powder daily on her body, including her genital area, since she was a teenager in 1982 through 2016.

In January, 2017, Ellen and Yury Kleiner initiated this civil litigation grounded in tort and strict liability. They have named at least seven defendants including Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.

The Johnson & Johnson Defendants filed six Motions to Exclude Plaintiffs' Experts from Testifying pursuant to Rule 207.1 of the Pennsylvania Rules of Civil Procedure and Rule 702(c) of the Pennsylvania Rules of Evidence. Extensive written submissions were received from all parties. Oral argument and PowerPoint presentations on February 21, 2020, were well researched and thorough.

After careful consideration of the records, this Court concludes that the expert opinions do meet the standards set forth in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923); Commonwealth v. Topa, 369 A.2d 1277 (Pa. 1977). The Motions to preclude the opinions of Ghassan M. Saed, Ph.D., Rebecca Smith-Bindman, M.D., Mark Rigler, Ph.D., John Godleski, M.D., Judith Wolf, M.D., and Laura Plunkett, Ph.D., DABT are Denied. To the extent that certain, limited evidence is deemed excluded or requires clarification, this Court will identify the matters in Order issued this date.

B. LEGAL DISCUSSION

The Frye test applies only when a party wishes to introduce novel scientific evidence from the conclusions of an expert witness. Strange v. Janssen Pharmaceuticals, Inc., 179 A.3d 45, 53 (Pa. Superior Ct. 2018), quoting Trach v. Fellin, 817 A.2d 1102, 1111 (Pa. Superior Ct. 2003). Frye does not bar disputed conclusions of an expert, so long as the methodology employed is generally accepted.

It has been stated that the Frye analysis is a two-step process. First, determine whether the opinions and evidence Defendants want to exclude are “novel scientific evidence”. Second, determine whether the expert’s methodology “has general acceptance in the relevant scientific community”.

In this litigation all parties focused on Step Two, that is, whether the procedures and processes employed by these experts have general acceptance in the relevant scientific community. This Court has determined that the Kleiner Plaintiffs met their burden to establish the general acceptance rule as to each expert. In addition, each of the experts is unequivocally qualified to provide the medical and/or scientific regulatory opinions set forth in their Reports.

The substance of these motions reveal that the Defendants are challenging the weight and conclusions reached by Plaintiffs’ experts. The Defendants’ scientific and medical expert communities may reach different conclusions than Plaintiffs experts. As long as the basic methodology is sound, **as we have here**, the opinions of Plaintiffs’ expert

witnesses may be assessed by the triers of fact. e.g. Rost v. Ford Motor Co., 151 A.3d 1032 (Pa. 2014); Betz v. Pneumo Abex LLC, 44 A.3d 27 (Pa. 2012); Grady v. Frito-Lay, Inc., 839 A.2d 1038 (Pa. 2003).

C. CONCLUSIONS

For all of the reasons set forth above, the Motions of the Johnson & Johnson Defendants are DENIED.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.